

DEPARTMENT OF THE TREASURY

PERSON TO CONTACT:

CONTACT TELEPHONE NUMBER:

IN REPLY REFER TO:

DATE: AUG 5 1997

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that you were incorporated under the laws of [REDACTED]. Article Two of these Articles of Incorporation states that "This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the nonprofit public benefit corporation law of Tennessee for charitable and public purposes. The charitable and public purposes include:

1. Research and development on sustainability in rural and urban communities;
2. Develop a venue to explore and discover personal development, holistic health and creativity from an afri-centric/multicultural perspective;
3. Work in conjunction with other sisters and brothers in other fields and facilitate change wherever there is a need, be it social, economic or spiritual.

Adequate provision has been made in these Articles of Incorporation to provide for the distribution of your organization's assets to qualified 501(c)(3) entities in the event the corporation dissolves.

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You indicate in your application that your activities are equally divided between conducting monthly village gatherings and council gatherings. This activity is being presented as a radio show entitled "_____ to educate the community on _____ holistic lifestyle/community issues, resources and solutions found in books." A second major activity which is currently scheduled to start in _____ will be "to operate a food/massage and personal care activity."

You state in your application that a corporation named _____ serves as a marketing umbrella for two for-profit businesses, _____ and _____ and the non-profit corporation _____. Information submitted in your application states that _____ is "a national non-profit organization which symbolizes an understanding of how to balance the mind, body, spirit, technology, building and land." You also state that this organization is a "consortium of concerned citizens, architects, engineers, entrepreneurs, therapists, construction managers, ministers, artists, computer programmers, and educators and that _____ believes in the power of ashe, the creative power from the Spirit to make things happen."

Information provided regarding the purposes of _____ indicates that this entity is incorporated in _____ as a sole proprietorship and operates out of _____ under the _____ corporation laws of _____ and operates under _____ and is owned by _____ an officer of _____

In a brochure submitted with your original application, you show several organizations including churches, radio stations and other entities as "clients" of _____. This brochure also indicates that "_____ is a division of _____ a national, nonprofit organization which symbolizes an understanding of how to balance the mind, body, spirit, technology, buildings and land."

You further indicate in your application that "the clients are a mixture of paid clients from the for-profit group _____ and clients for which _____ has donated volunteer services."

With regard to your board of directors, you indicate that "The board members are all family members who were committed to the organization at inception, but that you are open to adding more board members." You expect to add several new members as "advisors" in the near future but have not provided any detail on what duties or responsibilities these individuals will have within the organization.

Your proposed budgets for _____ and _____ indicate that you expect to receive \$_____ from possible donations and pay expenses as follows:

Advertising	\$ _____
Utilities/Phone	\$ _____
Professional Services	\$ _____
Supplies	\$ _____

Food/Catering
Site Rent
Printing

\$ [REDACTED]
\$ [REDACTED]
\$ [REDACTED]
\$ [REDACTED]

Section 501(c)(3) of the Internal Revenue Code provides for exemption from federal income tax for organizations which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 1.501(c)(3)-1(b)(iv) of the Income Tax Regulations states that an organization is not organized exclusively for one or more exempt purposes if, by the terms of its articles, its purposes are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than a private interest. Thus to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or by such private interests.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in Section 501(c)(3) in its generally accepted legal sense. The term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice or discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Organizations that are organized and operated on a non-profit basis do not always qualify for exemption under section 501(c)(3). The fact that an organization does not make a profit is not the determining factor.

See United States v. LaSociete Francaise de Bien Mut., 152 F. 2d 243 (9th Cir. 1945), cert. denied 327 U.S. 793 (1946); Hassett v. Associated Hospital Service Corporation, 125 F. 2d 611 (1st Cir. 1942), cert. denied 316 U.S. 672 (1942); Baltimore Health and Welfare Fund v. Commissioner, 69 T. C. 554 (1978); and B.S.W. Group, Inc. v. Commissioner, 352 (1978).

In Better Business Bureau v. United States, 326, U.S. 270-283, the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3). In order to qualify for exemption under this section, the applicant organization has the burden of proof to show that (1) it is organized and operated exclusively for a purpose or purposes described in section 501(c)(3), (2) that no part of its net earnings inures to the benefit of any private shareholder or individual, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2d, 632, 7th Cir. 1963).

Revenue Ruling 67-325, 1967-2, C.B., 115, citing a legal principle discussed in Evans v. Newton, 382 U.S. 296 at 308-309, states in part that "...A trust to benefit the well-being of members of the community may be deemed charitable if it is created for the benefit of the members of the community generally and not merely for a benefit of a class of persons." A trust is considered charitable because it relates to all inhabitants of a particular community and not to any classification of such inhabitants or any group by distinction of race, creed, social rank, wealth, poverty, occupation or business." Restatement, Trusts sec. 1375 comments a and c (1935; Restatement (Second) Trusts, sec. 375 comment a (1959).

In Baltimore Health and Welfare Fund v. Commissioner, 69 T.C. 554 (1978), the court held that an organization that operated on a non-profit basis but whose activities served the private interests of its membership rather than the interests of the general public was not entitled to exemption under section 501(c)(3).

The court also ruled that since the organization provided substantial benefits to its members, it could not be exempt under this section because it operated for a substantial non-exempt purpose.

In International Postgraduate Medical Foundation v. Commissioner, 56 TIM 1140, the court considered the exempt status of an organization whose activities were co-mingled with a for-profit business. The court stated that "when a for-profit corporation benefits substantially from the manner in which the activities of a related non-profit exempt organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) even if it furthers other exempt purposes."

In Ralph H. Eaton Foundation v. Commissioner, 55-1, USTC, 248, the court determined that an organization that engaged in commercial sales activities and donated its profits to charitable organizations was not exempt under section 501(c)(3). The court held that "while the second purpose of the organization was charitable, the first purpose clearly was not." Since the organization did not meet the organized and operated exclusively for charitable purposes requirement, it did not qualify for exemption under section 501(c)(3).

In Randall Foundation v. Riddell, F. 2d 803, (8th Cir. 1957), an organization was established to operate as a nonprofit charitable foundation. Income to the organization came primarily from the sale of shares of stock donated by the foundation's creator. The court held that this organization was primarily engaged in operating a commercial investment business and also stated that "a corporation which in its inception engages in trade, business or speculation and has a vague charitable design, does not come within the terms of the statute."

With regard to the organizational test under section 501(c)(3), your Articles of Incorporation state that "This corporation is a nonprofit public benefit corporation and is not organized for private gain of any person. It is organized under the nonprofit public benefit corporation law of [redacted] for charitable and public purposes. These charitable and public purposes include:

1. Research and development on sustainability in rural and urban communities;
2. Develop a venue to explore and discover personal development, holistic health from an afri-centric/multicultural perspective; and
3. Work in conjunction with other sisters and brothers in other fields and facilitate change wherever there is a need, be it economic, social or spiritual."

These purposes, as described in your Articles of Incorporation are not described in the definition of charitable as stated in section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations since they do not provide for "relief of the poor and distressed or underprivileged, advance religion, advance education or science, help erect or maintain public buildings, monuments, or works; lessen the burdens of government, promote social welfare or lessen neighborhood tensions, eliminate prejudice and discrimination, defend human and civil rights secured by law or combat community deterioration and prevent juvenile delinquency."

In addition, these purposes are broader than those permitted by section 501(c)(3) and do not serve an unidentifiable charitable class as discussed in Revenue Ruling 67-325. Therefore, we have determined that you do not meet the organizational test of section 501(c)(3).

With regard to the operational test required to be exempt this section, the applicant organization must demonstrate that:

1. It is operated exclusively for charitable and other stated purposes;
2. That no part of the net earnings of the organization inures to the benefit of any private shareholder or individual, officer, trustee, director or any other private person;
3. That the organization serves exclusively public rather than private interests;
4. That the organization is not operated for a substantial non-exempt purpose.

You state that to date your primary activity has been to conduct a weekly radio show where various authors present programs based on the commercial books they have published. The program schedule for these broadcasts shows that the [redacted] broadcast format is held by copyright in the name of [redacted], a for-profit commercial business. By operating in this manner, your activities do not meet the operated exclusively requirement since your activities do not serve exclusively charitable purposes as described in section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations. In addition, as the court stated in International Postgraduate Medical Foundation, "when a for-profit corporation benefits substantially from the manner in which the activities of a related non-profit exempt organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) even if it furthers other exempt purposes."

The second requirement of the operational test requires that "no part of the net earnings of the corporation inure to the benefit of any private individual." The fact that your operations involve both a commercial trade or business and a non-profit organization and that the broadcast schedule is protected by copyright to the commercial entity causes the net earnings of the corporation to benefit private individuals such as officers, creators or directors of the corporation which precludes exemption under section 501(c)(3).

The third requirement of the operational test states that an organization exempt under section 501(c)(3) must be operated exclusively for public rather than private interests. The fact that your current board members are related family members indicates that your activities primarily serve the private interests of a limited group of individuals rather than the broad interests of the community at large which is required to be exempt under section 501(c)(3). As stated in Baltimore Health and Welfare Fund, an organization's activities must serve the public interests of the entire community rather than the private interests of a limited group of individuals.

The last requirement of the operational test is that an organization cannot be operated for a substantial non-exempt purpose. Evidence submitted in your application indicates that the activities of [REDACTED] are directly involved with the operations of two commercial businesses. You indicate in your application that funds for [REDACTED] have come from "clients of [REDACTED]" and other sources. Your proposed expenses for [REDACTED] show \$[REDACTED] budgeted for Advertising, Utilities/Phone, Professional Services, Supplies, Food/Catering, Rent and Printing. These expenses are normally incurred by a corporation operating a commercial trade or business. While you claim that you are organized and operated for charitable purposes, there is no evidence in your proposed budget that you expect to spend any of your financial resources for charitable grants or provide assistance to individuals in need.

In Randall Foundation v. Riddell, the court stated that "a corporation which in its inception engages in trade, business or speculation and has a vague charitable design does not come within the terms of the statute." For the reasons stated above, your activities serve a substantial commercial purpose which precludes exemption under section 501(c)(3).

Since you have not met your burden of proof to show that you meet the organizational and operational tests of section 501(c)(3), we have concluded that you are not entitled to exemption under this section. In accordance with this determination, you are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under sections 170, 2106, 2055 and 2522 of the Code.

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In accordance with section 6104(c) of the Code, a copy of this letter will be sent to the appropriate state officials.

If you do not agree with this determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892.

Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all of the information required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



District Director

Enclosure: Publication 892

cc: State Attorney General